IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15485 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY EXECUTIVE ENGINEER GUJARAT WATER SUPPLY AND - Petitioner(s)

Versus

DALWADI RAJUBHAI KANJIBHAI - Respondent(s)

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Appearance :

MR RC JANI for Petitioner(s) : 1,
MR BHAVIN J SATWARA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/09/2005

ORAL JUDGMENT

1. In the present petition, the petitioner employer has challenged the legality of the award dated 25th April, 2005 passed by the Labour Court, Surrendranagar. By the impugned award the Labour Court was pleased to allow the

reference of the respondent-workman partially. The termination was set aside, workman was ordered to be reinstated in service with continuity and 25% back-wages.

2. Complaining that he was illegally terminated on 1/11/1993 by the petitioner the respondent-workman approached the Labour Court by raising the Industrial Dispute. In his statement of claim the workman did nt specifically contend that he had worked for more than 240 days in the 12 calender months preceding his termination. He however raised the contention that his termination was opposed to the provisions of Section 25-F of the Industrial Dispute Act. The petitioner-employer filed reply denying the allegations made by the respondent-workman. Since no specific statement was made in the statement of claim that the workman was employed for more than 240 days during the relevant period there was no specific denial to this aspect of the matter in the reply filed by the employer.

3. Before the Labour Court also in his deposition the workman never contended that he had worked for more than 240 days during the relevant period. He however stated that he was terminated on 1/11/1993 without notice or

notice pay. The employer examined one Shri Chaturbhai as its witness. Chaturbhai did say in his deposition that the workman had not worked for 240 days continuously and his engagement was intermittent. The Labour Court allowed the reference partially by observing that though the witness of the employer stated that the workman was not engaged for 240 days however, no documents have been produced by the employer to establish this fact. The Labour Court observed that the workman had stated in his deposition that he has worked for 240 days. The Labour Court also observed that in the statement of claim the workman had contended that he has worked for more than 240 days. Despite this, the employer did not produce any documents such as muster roll, attendance register etc. The Labour Court, therefore, observed that such documents were within the custody of the employer the same should have been produced to show that the workman was not engaged for more than 240 days. Having failed in this duty; the Labour Court was inclined to draw adverse inference against the employer. It was, therefore, concluded that the termination of the workman was in breach of provision of Section 25 F of the Industrial Dispute Act.

4. The observations of the Labour Curt are not sustainable on facts as well as in law. Firstly, the workman has not stated in his deposition that he has worked for more than 240 days. Secondly, in the statement of claim also there was no such assertion of the workman. Even otherwise it was preliminary duty of the workman to establish before the Labour Court by leading reliable evidence that he had worked for more than 240 days during the relevant period. It may be noted that the workman did not give any application to the Labour Court calling upon the employer to produce documents which would establish the actual number of working days put in by the workman. In that view of the matter it was not open for the Labour Court to conclude that on account of the employer not producing the necessary documents the workman should be presumed to have worked for 240 days during the relevant period.

5. In the decision of **Range Forest Officer vs. S.T.Hadimani reported in AIR 2002 SC 1147** the Hon'ble Supreme Court observed that it is for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and

that cannot be recorded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had in fact worked for 240 days in a year. This view was reiterated by the Hon'ble Supreme Court in the decision of **M/s. Essen Deinki vs. Rajiv Kumar reported in AIR 2003 SC 38**. This aspect was once again highlighted by the Hon'ble Supreme Court in the decision of **Municipal Corporation, Faridabad vs. Siri Niwas reported in 2004 AIR SCW 5184.**

6. From the above discussion, it can be seen that the Labour Court erred in allowing the reference of the respondent-workman. Impugned award is hereby set aside. It may be noted that workman had not lead any other evidence in support of his case. Rule is made absolute. No order as to costs.

(Akil Kureshi, J.)

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